SW 1077

Previous references.

Ltrs 97—11 papers filed for March 1912 } 1911.
(Courts)

Later references.

File No. 97—11

Serial Nos. 1—17

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—17

Part B. for March 1912

SUBJECT.

Appeal of J. Walters to the Madras High Court in the Tuticorin Case.

---

1) From W. W. Merrell Esq: State Geologist —
Do. 507 of 25.8.11
Requests instructions in the matter —

2) From — Do —
Do No: 553 of 6.9.11
— Do

3) To John Adam Esqr —
Do of 6.9.11 —
Enquires whether it is a part of his duty to suppress Conviction etc

4) From — Do —
Furnishes information to the contrary

G. R. S. 58

5) To C.H. Napier Esqr Bar-at-Law.

No: 9538 of 5.5.11

Enquires whether he is served with a notice

6) From — do — No: 1218 of 5.5.11

Furnishes the information

7) From Hon Wetherell — D.O. 12/5/11

Forwards copy of a letter from

Mr H.G. Gifford of the Champion Reefs -

8) From — do — of 13.5.11

States that the appeal comes off on the 18th Septr

9) To — do — D.O. No: 9540 of 15.5.11

States that Mr Bagnell, if necessary,

will be deputed to help Mr Napier.

10) From The Registrar Madras

No: 1251 of 14.5.11

Enquires certain details -

11) To - — do — D.O. No: 9616 of 19.5.11

12) To —— do — Camp: No: 1 of 1.10.11

Returns the original notice received with S.No: 10

13) From — do — No: 1865 of 30.11.11

States that the accused was acquitted by

the High Court of Madras

14) To - — do — No: 1840 of 20.12.11

Calls for a copy of the Judgment.

15) From — do — No: 161 of 26.1.12

Forwards the Judgment copy

G.R.S. 11] 1911-12

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

Ct. File No. 97-11.

FILE HEADING.

Appeal of J.E. Watters to the Madras High Court in the K.G.F. Overwinding Case.

From E.W. Wetherell, Esq. State Geologist.

Do. No. 507 Dated 29.8.1911 Received 30.8.1911

Diary No. 6623 | Enclos. two Spare Copies. | Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that Watters, Engine Driver K.G.F. has appealed to the Madras High Court against his Conviction & sentence by the Justices of the Peace K.G.F. and requests instructions in the matter

NOTES AND ORDERS.

1a

Dewan's Order 1st Sec. Please have this case worked up and submitted through the Councillor immediately.

Init. K.M. 30-8-11

P.J.O.

NOTES—First Sheet.

GPB—30,000—12-8-11

Serial No.

12 Subd with a copy of the Mining Regulation and the rules framed thereunder from time to time. As for the rule refd to by the accused, please see page 13 of the Compilation of Rules issued from the Geological department. These rules have not been superseded & have still the force of law in Mysore.

Flag R

Yes - Please see Sec 24 of the General Clauses Regn

SH

2 Advice file no 46 of 1911 on the subject which was subd to Govt, has been obtained and recvd.

SN (111)
30/8/11

Required at 8th Aug" in our SH

3 The Case will be heard by the Madras High Court and there is no exact information available as to whether that Court will issue a notice to the Respondent in the Case viz the Govt of Mysore. It seems therefore desirable that a lawyer should be engaged in Madras on our behalf to take notice of the appeal filed and put in an appearance at the hearing.

4 Mr C. F. Napier Bar. at. law has had some Experience of the technique of mining Operations having been a lawyer for the Mining Board for some time and he may perhaps be Engaged in preference to Others

NOTE— Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Cr File No. 97 of 19 11

Serial No.

It is seen from the papers that he is Engaged by the Govt of Madras as Special Public Prosecutor in the Tinnevelly Murder Case but he has returned to Madras now ~~Cancel~~ That Case will be taken up at the High Court on the 11th Sept but this perhaps will not stand in the way of his Action getting the mines Accident Case posted to a ~~early~~ Convenient date. The accused is on bail.

5 The defence now advanced by the accused seems to be quite an afterthought, and it is not clear how it can be accepted without Evidence being taken on the point. ~~Rule 149 relied on by him requires that~~ He accepts the Rule relied on Rule 149 of the Mining rules but Rule 148 which applies to drivers of all winding Engines (including thereby those in which persons are raised or lowered in the Shafts) requires that if the driver shall work longer than the prescribed Shift an Entry of the fact must be made in a book kept for the purpose. It is a matter for Early investigation whether such an Entry has been made in the Case under reference.

6 Even assuming, however, that the

NOTE— Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Gen File No. 97 of 1911

Serial No.

that the Engine driver did Stop 35 minutes longer than his Shift, it by no means absolves him from the duty of Exercising all reasonable Care and Caution in the discharge of his duties So long as he is on duty Unless he proves that by the overstay of 35 minutes he Suffered a Physical break-down and was thereby unable to properly Control the machine his present defence avails him nothing. [redacted]

1/9/11. SB

Secy

To Govt advocate for favouring opinion.

CBJ
1/9/11

G.O. 15
Dt. 1-9-11

The case being an important one it is desirable that when the appeal comes on for hearing before the High Court of Madras, Counsel must be instructed to support the Conviction & Sentence.

The question is whether we should specially Engage a Counsel

NOTE— Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

G.D. File No. 97 of 1911

Serial No.

and see him on whether notice of the appeal will not as a matter of course be given by the High Court to the Public Prosecutor of Madras to appear for the respondent. I am of opinion that in the present case it is a part of the duty of the Public Prosr of Madras to appear & support the conviction.

10 Under para 17 of the Instrument of Transfer plenary criminal jurisdiction over European British Subjects in Mysore should continue to vest in the Govr Genl in Council & under the Foreign jurisdiction & Extradition act the Govr Genl in Council may exercise jurisdiction within any place beyond the limits of British India or may delegate the same. Justices of Peace in Mysore appointed under the powers conferred by Sec 6 of the Foreign jurisdiction & Extradition act likewise exercise the jurisdiction delegated to them by the Govr Genl in Council

NOTE— Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Ct. File No. 97 of 1911

Serial No.	
	& a conviction by such a Justice of the Peace in Mysore State has to be supported by the Public Prosr of Madras in the same manner in which he would be called upon to support any Conviction passed by any other Justice of the Peace whose Court is to be called in British India
	11 In a similar instance in the year 1903 when Mr. Plumer acted in his Capacity as Justice of Peace Convicted one Mr. Adams in Cr: Case no 195 of 1902-3 of being in unlawful possn of Mining Materials under the Mysore Mines Regulation (III of 1897) & the accused preferred an appeal to the Madras High Court Mr Sankaranarain the then acting Public Prosr appeared on behalf of the Crown
	12 I would however suggest a D.O being addressed to Mr. C. J. Napier the present

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S.-12]
General and Revenue Secretariat.

Leh File No. 97 of 1911

Serial No.

Public Prosr. of Madras about the practice in such matters & if it is ascertained that he will not as a matter of course appear on behalf of the Crown then we shall have to specially fee him & retain him on behalf of the Mysore Govt. to appear & support the conviction — Under any circumstance it is desirable that somebody is ~~noooo~~ deputed to go to Madras & instruct Mr. Napier about the facts of the case.

Sdorasawmy Jr
1st Sept. 1911 — for Advocate General

13 If approved Mr. Napier will be written to.

2nd Sept. Dewing

14 I agree. H
2/9/11

15 Yes, without loss of time
4/9/11

13369
4.9.11

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Sd 4/9/11
Sd 2/9/11

G. R. S. 12]
General and Revenue Secretariat.

Cr. File No. 97 of 1911

7

Serial No.

Asstt Secy will kindly write to Mr W by Tuesday post

2 Do. from Eld. Wetherell Esq. dtd
No 5538 6.9.11.
Requests early instructions in the matter

8/9/11

(1) 17 Do. send Order to Mr Adam (P.P.) under Secy's orders

Do dy 6-9-11

3 Enquire whether he has been served with a notice in the above appeal & whether it is a part of his duty to support conviction.

8/9/11

4 From Mr. J. Adam, Crim Prosecutr Madras. 7-9-11.
States that he has filed the appeal on behalf of Walters and that his functions extend only to cases committed to High Court sessions & to appeals from Presidency Magistrials and that in mofussil cases notices usually go to the Govt Pleader and adds that the latter has received none in the case.

Subd for orders.

SN(11)
8/9/11

19 May we Enquire if Mr Napier whether he accepts to practice in the Madras High Court he Expects

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Cab File No. 97 of 19 11

Serial No.

to get a notice in the case?

[Mr Adam was written to as he is the Crown Prosecutor as well as Public Prosecutor. It was verified by a reference to reports that he had appeared to support some convictions. However it now turns out that the Govt Pleader (Mr Napier) gets notices in Criminal appeals from the Mofussil. We may perhaps enquire of him now if it is intended to pursue the matter further.]

8/9/11

Sd

Lee). 20

Dewan

8/9/11

Dewan's order.

21

Ascertain from Mr Napier if he expects to get a notice

8/9/11. Sd

22 Issue D.O. post up

Keeping Cy - must catch today's post

8/9/11. Sd

* Please see also Govt Advocate's note supra

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Serial No.	
5	To C.T. Napier Esq. Bar. at Law Madras, No J838 of 8-9-1911. Enquires whether he has been, or will be served with a notice of the appeal in the usual course and if it is a part of his official functions to support the Conviction.
6	From C.T. Napier Esq. Govt Pleader Madras. No 1218 of 9-9-1911. States that he has received notice of the appeal in the usual course and that if any one is to be sent to Madras to assist him, his further Communication might be awaited before doing so.

Subd 23 Mr Napier states that he will ask for a week's notice of the hearing of the appeal and that on receipt of the notice he will Communicate the fact to enable us to send any one whom we may select to assist him.

Subd for orders.

HCJ-122 11-9-11

SN(11) 11.9.11

[The influence drawn by Mr Napier is not quite Correct. There was nothing said about our sending any one

GPB—50,000—12-8-10

Serial No.

instant
to him An Exact Copy of the letter sent to
Mr Adam ~~[illegible]~~ was also sent to him].

25 Mr Napier will apparently support the Conviction as a part of his official duties

Submitted for further orders

11/9/11.

Had talk with the L.J. Weather as instructed by Sec. Please send this up for personal signature of Hon Secy tomorrow

14/9/11

27 See) Either Mr Bosquet or Mr Pritchard or if preferred the Public Prosecutor Bangalore Dn, maybe asked to go to Madras & instruct Mr Napier on hearing from him.

28 The Geol. Seer maybe consulted as to whether Mr Bogue who might be sent to instruct Mr Napier.

CMS
12-9-11

Resubd
SW
13/9

III

29 D'Cruz's order

Please obtain Mr Bethell's D.O. in the matter and then send up the file.

B.O.

Office - Enquiries
Mr D'Cruz's Office
and Submit for with
to Soon

14/9/11

14/9/11.

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No. 7

D.O d: 12-9-11 from Mr. E. W. Watherell to the Dewan.

This is in reply to Dewan's D.O. 8/6-9-11.

Forwards a copy of letter from Mr. H. J. Gaffard, Secy. of the Champion Reef Gold Mining Co, stating that the Company intend to safeguard their interests & refute any false statements and that they have instructed Counsel to this effect.

Subd as directed.

CW(11) 14/9/11 — 80

From Mr Gaffords' letter we are to gather that the Mining Board will Engage Counsel "Should such a Course be necessary". But they have decided to Engage Counsel if fresh Evidence is not taken by the Madras High Court.

On this last point it may be Stated that, judging from the papers available, the appellant is not likely to cite fresh Evidence. He seems to rest his defence on the fact that he was made to work beyond his Shift and for this Contention he finds Support in Mr Bowring's Judgment itself. It is Stated therein that the accused began work at 10 pm and

Flag X

NOTE—Contn. sheet.

G. R. S. 12]
General and Revenue Secretariat.

ds File No. 97 of 1911

Serial No.

and the accident happened at 6.35 Am. that is more than 8 hours after he commenced work [Engine drivers shd not be made to work more than 8 hours]

32/ Govt are to depute any one to instruct Mr Napier then his T.A and halting allowances will have to be borne by Govt. There seems to be no occasion for any Extra Cost

14/9/11. SH

Perhaps to be added to 4 insert this 2nd Op.

Sec'y 33 Further action on the part of Govt does not seem necessary.

6.40 Pm

2nd & Decem) CS 14/9/11

319, 34/ agree SH 14/9/11

15/9/11

Dewan's order

35 2/ Mr Cotterell Considers it necessary or advisable he may depute Mr Bracegirdle to help Mr Napier at the hearing. [No Extra Cost will be involved except T. A]

BS, 15/9/11 SH

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Cts File No. 97 of 1911-12

Serial No.	
	Do. from Mr. W. G. Draft & fair Copy pasted to Mr. E. W. Wethered Portap.
	Do. from Mr. W. G. also portap. 38 15/9/11. 15/9/11
	Secy 37 Issue 15/9/11. 16/9/11
8	Do. from Mr. Wetherell & 13.9.11. States that the appeal will come off on the 18th inst.
9	Do. to the Same Officer, N. 940 & 15.9.11 States that if he considers it necessary or desirable, Mr. Bocquet may be deputed to help Mr. Napier.
10	From the Govt Pleader, Madras, N. 1251 & 14.9.11. Enquiries whether the appeal has to be opposed and asks for necessary instructions, and requests to be furnished with a printed Copy of the Judgment. Subs for orders.
	Secy 38 19.9.11 19/9/11 (1) Mr. Napier may be instructed to oppose the appeal (2) We have to heard for

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

Mr Bethell as to what action has been taken by him in pursuance of our last D.O. If appd Mr B will be written to demi officially.

(3) Mr Napier wants a printed copy of the judgment but we have not got any.

19/9/11

Secy

39 1 & 2. Yes.

3. A typed copy may be sent.

[If absolutely necessary the judgment may be got printed & a copy sent.]

CB
19/9/11

40 D.O.* written to Mr Napier stating that he may oppose the appeal and that a printed copy of the judgment will be sent to him.

SH

With Cy

*Action is being separately taken to have the Judgt. printed

NOTE—Contn. sheet.

41. D.O. issued to 19/9/11 C. Napier Esq. P.T. No. 1016 of 19.9.

GPB—55,000—27-4-09.

G. R. S. 12]
General and Revenue ecretariat.

Cts. File No. G 7 of 1911-12

Serial No.

H.O.J. 18

41 File forwarded to the Offg State Geologist in Mysore for favour of stating what action, if any was taken on this office Do No J. 940/Cts 97-11 dated the 15th inst. The file may kindly be regarded as urgent as a further reply is due to Mr Napier

B.O

MYSORE GEOLOGICAL DEPT.
BANGALORE.
SEP. 20 1911
Regd No. 2.

S. Srinivasaiya

19/9/11

for Secy to Govt

Recd. 20-9-11 M.V.

42 It is important for Govt. to see that Engine Driver Watters does not get off on such a weak defence as that now brought forth by him and I have accordingly instructed Mr Bocquet to place himself in communication with Mr Napier and to proceed to Madras to give him necessary instructions in the matter at the time of the hearing of the appeal.

E. W. Mitchell

20th Sept. 1911.

Offg. Secy. to Govt., Geol. Dept.

NOTE—Contn. sheet.

GPB—55,0.1)—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

File No. 97 of 1911

Serial No.	
	Subd. 43 SW(11) 21/9/11 No further action appears necessary now. A printed copy of the judgment will be sent soon. 21/9/11.
	Secy 44 Sub to Dewan for perusal
13745 24-9-11	45 Dewan Asst Genl Sahib returned the file with III early 29/9/11
	46 Draft D/- returning the original notice is herewith Subd A Cs 122 1-10-11
	47 Subd
	Issued Comp No 18 1/10/11

A printed copy of judgt has also been sent separately to-day
1-10-11

NOTE--Contn. sheet.

GPB—55,000—27-4-09

Serial No.	
	From C. Srikanteswara Iyer Esq. D. C. Kolar
	Do D. 17-8-11
12	To the Govt Pleader, Madras. Camp No 1 D. 1-10-11.
	Returns the original notice received with Sl 10
13	From the Govt Pleader, Madras No 1865 D. 30/11/11
	Informs that the appeal came on for hearing
	on 22-11-11 and when the conviction and sentence
	were set aside and the accused acquitted
48	Subd for information. May we call for a copy of
	SA-157 6/12/11 SN(11) 13/12 the judgment?
	49 Ycs 13/12/11
	file the Hble Subd & Dewan 2nd & for perusal Sd
	Ch 13/12/11
50	Draft Subd,
	SA-157 13/12/11 SN(11) 13/12/11
	51 Issue 14/12/11 Sd
	Sun 14/12
14	To the Public Prosecutor, Madras No J 1840 D. 20-12-11
	Calls for copy of the judgment.
15	From the Public Prosecutor, Madras.
	No 161 D. 25. 1. 1912
	Forwards a copy of the judgment passed
	by the High Court of Madras in
	the aforesaid appeal.
	PJ 8

NOTE—Contn. sheet.

GPB—55,000—27-4-09

G. R. S. 12-]
General and Revenue Secretariat

to File No. 97 of 1911-12

Serial No.

5 ✓

Subd for information.

40 122 SM(11)
29.1.12

53 The file may perhaps be subd to 2nd C^r & Dewan for perusal & the judgment

29/1/12

Sd

Sec) 54 The judgment of the High Court indicates the need for greater attention being given to the prosecution of cases in the K.G.F. To some extent thoroughness seems to be sacrificed to secure promptness of disposal.

2nd C^r & Dewan

CJS
31/1/12

14818
3.2.12.

55
Seen.

Sd
31/1/12

31/1/12

56
In case the Hy C^r has no objection the judgment may be sent to them for perusal & kind attention with any remarks he may have to make on the paper of the trial Commencing upon 17 & 18-12

Sd
1/2/12

Put up with draft letter

19/2/12

G.K.B.—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Cts File No. 97 of 1911-12

Serial No.	
	5 Draft Subd H.C. 122 SW 23.2.12
	5-8 Esd 24/2/12
	Do.
16	The Dy. Commr of Kolar no. J 2532 dt 1.3.12 Forwards the ref judgment for information & return with any remarks he may have to make.
17	From The same officer no. 6031/293 dt 12.3.12 States that he has no remarks to make & submits a copy of the letter of the Offg: Chief Inspector of mines detailing the circumstances under which the question was pushed through.
	55 Subd. The papers may now be filed after perusal by the Dewan and 1st Secretary. KV (123) 26.3.12 SW (11) 1573
	Seen 60 Seen 1st C. & Dewan 3886 23.3.12 22/3/12 61 Seen by the Dewan Seen. file Sd Bn 18.3.12 C.B. 22/3/12 Bn B 5/4/12 Sd 6/4/12

NOTE—Contn. sheet.

GPB—50,000—12-8-10

To Secy See P.4 / Police 46-11-24/8
Dotr 3010 J.623

Urgent

D.O. No. 507
Encl: One

Mysore Geological Department.

Bangalore, 29th Aug 1917

Cls 97-4
S. N. (1)

Dear Mr Ananda Row.

I enclose herein a private letter D.O. dated the 28th instant, from Mr.R. Bocquet, Offg.Chief Inspector of Mines, in which he says that Engine Driver Watters of the Champion Reef Mine, who was responsible for the fatal accident of the 9th instant due to overwinding in ~~the~~ Tennant's Shaft and was convicted and sentenced to three months' rigorous imprisonment by the Justice of the Peace and First Class Magistrate, Kolar Gold Field, has now preferred an appeal to the Madras High Court and that he has now taken up a new line of defence. Mr.Bocquet considers that it is necessary that the weakness of the defence now put forward should be clearly pointed out to the Appellate Court and I quite agree with him in this view and solicit the favour of your orders as at a very early date

to

Correlation
Vol I

3

Oorgaum,
28-8-11.

My dear Wetherell,

I presume you are aware that Watters the driver on duty at Tennants Shaft Engine Champion Reef when the overwind occurred has appealed against his conviction & sentence of 3 months rigorous imprisonment by the

T. P. 1st class magistrate here – Vide the Madras Mail (Legal Intelligence) of the 24 8/11.

The appeal has been admitted by the Madras High Court & Watters is at present on bail.

It will be observed that he (Watters) has taken up an entirely new line of defence, Viz: working 8 hrs. & 35 mins.

in contravention of Rule 149 Gr. Reg. Rules which point he never mentioned when the case Came off here. This is purely a private arrangement between the drivers themselves, who sometimes extend the night shift by an hour, as the work generally is so much lighter then than the other 2 Shifts - morning & afternoon -

It is obviously necessary for somebody, who knows, to explain this & other points to the Court when the appeal is heard, otherwise a totally wrong impression will be given to the public in general about the whole affair - Naturally it will also appear in print -

Can you therefore tell me whether the Mysore Govt are going to take any steps

3 8

7

in the matter to instruct
the Public Prosecutor, what
the procedure is?
It would be too ridiculous
if Watters got off on such
a weak defence as this
Please let me hear what
is going to be done as soon
as possible; we are all
anxious there should be no
misunderstanding on any

Madras Mail

24. 8. 11

9

Legal Intelligence.

MADRAS HIGH COURT—23RD AUG.

(Before Mr. Justice AYLING and Mr. Justice SPENCER.)

The Kolar Over-wind Case.

Mr. John Adam moved for the admission of an appeal and applied for bail on behalf of Mr. J. E. Watters, who had been convicted by the 1st Class Magistrate and Justice of the Peace, Kolar Gold Field, under Regulation 149 of the Mysore Mining Regulations and sentenced to three months' rigorous imprisonment. The application was supported by an affidavit sworn to by the appellant's brother.

The application for bail set out that the Magistrate based his judgment on the presumption that the accident could on the evidence be due only to carelessness, and that the Magistrate was wrong in that presumption. Accused did not for a moment accept the presumption of carelessness on his part, but submitted that even on the evidence such carelessness could not have lasted more than a second. The accused was kept at work all night and had been caused to work for 8 hours and 35 minutes, in direct contravention of Regulation 149.

The offence was identical with Section 304 A, I.P.C., which was bailable.

Their Lordships ordered the release of the appellant on his personal recognisance for Rs. 500 and two sureties for a like sum. The appeal was also admitted.

60-11

D. O. No. 7 3044 No. 553.

EARLY.

Mysore Geological Department.

Bangalore, 6th Sept. 1911.

Dear Mr Ananda Rao.

May I invite your kind attention to my D.O. No.507, dated 29th August 1911, and request the favour of your instructions in the matter of the action proposed to be taken in the appeal preferred to the Madras High Court by Engine Driver, Watters, of the Champion Reef Mine against the conviction and sentence passed by the Justice of the Peace and First Class Magistrate, Kolar Gold Field, in connection with the fatal accident of the 9th ultimo due to overwinding in Tennant's Shaft.

2. The matter is a very urgent one and I shall be

Ct 97-11
S.100[illegible]

12

Presidency

Sir

You are probably aware that what is known as the Kolar Obstructing Case one Engine Driver J. E. Watters was convicted by the 1st class Magistrate of Jail Pet for an offence under the rules framed under the Mysore Mines Regulation and sentenced to three months' rigorous imprisonment. It is seen from the papers that he has preferred an appeal to the Madras High Court and ordered to be that he has been released on bail

I shall be obliged to be informed if a notice of

the hearing of the appeal has been or will be served on you in the usual course and if it is a part of your official duty to support the Conviction

If it is not a part of your official duty will you kindly let me know if you can accept an engagement on behalf of the Mysore Govt in case they decide to defend the appeal? I shall also be obliged to know your fees

~~The favour of a~~ I am to ask for the favour of a very early reply as the matter is very urgent

Sir
Your most obedient
Humble Servant

Sd

is Prosecutor

13

Concerned in by the Madhava under Dewan's instructions

Sd

4/9/11

14 Bangalore
6 Sept 11.

D.O.No. 2749

My dear Sir

With reference to your D.O. No. 507 of the 29th Aug regarding the appeal of Engine driver Mr Coates, I write by this an enquiry being ~~made~~ ordered from the Judicial Branch of the Secretariat of Mr C.J. Napier of Madras, whether the appeal which he gives to the Public Prosecutor of Madras against the conviction

2. In the meantime

I should like to know 15
whether the Mining Company
~~Board~~ proposes to engage
Counsel at Madras
to support the Commissioner,
because, after all, their
interests in the case are
much greater than those
of the Govt.

Yrs sincerely

(Dewan)

E. W. Wetherell Esq

16-17

Crl 97-11

8.11.24

Crown Prosecutor's Chambers,
HIGH COURT BUILDINGS,
Madras, E., 7 Sept 19

Dear Sir,

with reference to your D.O. Y/y's date, I filed the appeal for Watters and obtained bail for him. My functions extend only to cases committed to the High Court Sessions and to appeals from Presidency Magistrates.

In mofussil cases notices usually go to the Government Pleader but he tells me he has as.

18

General and Revenue Secretariat.

Bangalore 8/9/11

J 838

Ls 97-11

8 L 5

Dear Sir

You are probably aware that what is known as the Kolar overwinding case, one Engine Driver, J. E. Watters was convicted by the 1st class magte and Justice of the Peace, K. G. F., of an offence under the Rules framed under the Mysore Mines Regulation and sentenced to three months' rigorous imprisonment. It is seen from the papers that he has preferred an appeal to the Madras High Court and that he has been ordered to be released on bail.

I shall be obliged to be informed if a notice of the hearing of this appeal has been or will be served on you as Public Prosecutor or Govt Pleader in the usual course and if it is a part of your official functions to support the conviction.

I am to ask for the favour of an early reply as the matter is very urgent.

Hoping to be excused for the trouble

I am Dear Sir

Yours Sincerely

sd. S. Hirigamaiya

asst Secy to Govt.

C. F. Napiers Esqr Bar-at-law

Madras

No. 1218

19

Government Pleader's Office,

High Court,

Madras, 9th September 1911.

J 730

Courts File No 97-4
S No 1

From

C. F. NAPIER, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Secretary to the Government of Mysore,

General and Revenue Department, M y s o r e.

SIR.

I have the honour to acknowledge receipt of your D. O. J 838, dated 8th instant. I have received notice in the usual course of the appeal of the accused James Everitt Watters against his conviction in Criminal Case No. 136/11 on the file of the Justice of the Peace at Kolar Gold Fields. I infer from your writing to me that you desire to send some one to assist me in the case. I will ask for a week's notice of the hearing and on receipt of the notice will communicate with you. You will then have time to send down any one whom you select to assist me.

I have the honour to be,
S i r,
Your most obedient servant,

C Napier

Government Pleader.

G. P. Form No. 16
300—20-12-10.

From

THE GOVERNMENT PLEADER,

Madras,

To

The Secretary to the Government
of Mysore, General and Revenue
Department, Mysore.

Dated 9th
Despatched } September 1911
Received

No. 1218

ENCLOSURE.

Subject.

Stating that he has received notice of the appeal against Criminal Case No. 136/11 on the file of the Justice of the Peace at Kolar Gold Fields.

Dewan's orders No. 88
Encl. one

Dy Jr 3669

To the Secretary
What next?
BR

Mysore Geological Department.

Bangalore, 12th Sept. 1911

87

Fdo
13.9.11

Dear Mr Ananda Row

With reference to para 2 of your D.O.No.2749, dated 6th September 1911, regarding Engine Driver Watters appeal to the Madras High Court, I beg to enclose herein for your information an extract from a letter, dated 8th September 1911, from Mr.H.J.Gifford, Superintendent of the Champion Reef Gold Mining Company, to Mr.Bocquet, from which it will be seen that the Company intend to safeguard their interests and refute any false statements and that they have instructed counsel to this effect, should such a course be necessary.

Yours sincerely
E W Retherell

T. Ananda Row, Esquire, B.A..C.I.E.,
Dewan of Mysore.

22

Enclosure 3 to Sr. 7

Extract from letter, dated 8th September 1911, from H.J. Gifford, Esquire, Superintendent of the Champion Reef Gold Mining Company of India, Ld., to R. Bocquet, Esquire Offg.Chief Inspector of Mines in Mysore.

In the matter of Engine Driver Watters' appeal, a member of the Firm of Messrs. Short & Bewes, Solicitors of Madras, at our request has visited this Mine, and has obtained all the information necessary to instruct Counsel in this Company's interests, should this be necessary.

I am informed that in the case of an ordinary appeal, no fresh evidence would be taken, but if any affidavits are put in by the defendant, to support a claim for a re-trial of the case, these would be communicated to the prosecuting party.

In such a case this Company's Solicitors would engage Counsel to watch the case on the Company's behalf and to refute any false statements.

E W Retherell

Offg. Secretary to Government

Geological Department

12. 9. 1911

23

No. 89

88

Mysore Geological Department.

Bangalore, 13th Sept 1911.

Dear Mr Ananda Row

In continuation of my Memo No.88 of yesterday, I beg to inform you that I have just received an official communication from the Offg.Chief Inspector of Mines in Mysore, intimating that the appeal preferred by Engine Driver Watters of the Champion Reef Mine to the Madras High Court is to be heard on the 18th instant.

Yours sincerely

E W Sherrell

T. Ananda Row, Esquire, B.A.,C.I.E.,
Dewan of Mysore.

24

G.R.S. 26]

C5. File No. 97-11

Serial No. 9

Diary No. of letter replied to

No. 3940/C5-97-11

General and Revenue Secretariat

(C5)

, *the* 19 .

To D Ranasinha

With reference to the Correspondence ending with your D.O. No. 89 dated the 13th inst. intimating that the appeal preferred by Engine Driver Walters will be heard on the 18th inst, I am desired to say that if you consider it necessary or desirable advisable you may depute Mr Bocquet to help Mr Napier at the hearing.

I am

D Ranasinha

Yours sincerely

Date of issue 15-9-11

Signed by M R C S Balasundaram

for

over.

SUBJECT.

(See)

To

E. W. Wethmill Esq

Asst. State Geologist

15/9/11

No. 1257

Government Pleader's Office,

High Court,

Madras, 14th September 1911.

DIARY No. 1805

1911-1912

SECTION Cts

FILE No. 97-11

SERIAL No. 10.

From

C. F. NAPIER, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Secretary to the Government of Mysore,

General and Revenue Department, Mysore.

SIR.

In forwarding herewith the notice and copy of appeal petition received by me from the High Court in Criminal Appeal No. 416 of 1911, I have the honour to request you to inform me as early as possible whether you wish me to oppose the appeal and also to give me any instructions which you may think necessary. I shall be obliged if you will furnish me with a printed copy of the judgment of the Justice of the Peace.

2. The date given in the notice is only a formal one and the case will not come on for hearing on the said date.

I have the honour to be,
Sir,
Your most obedient servant,

C. Napier

Government Pleader.

G. P. Form No. 16
.300—20-12-10.

From

THE GOVERNMENT PLEADER,

Madras,

To

The Secretary to the Government
of Mysore, General and Revenue
Department, Mysore.

Dated 14th
Despatched } September 1911
Received

No. 1257

ENCLOSURE.

Subject.

Requesting to be furnished with instructions in Criminal Appeal No. 416/11 on the file of the High Court.

26

Memorandum of Criminal Appeal.

Under Government of India Notif. 1783 of September 23rd, 1874 and 28 Vict. Cap. 15, Sec. 3.

In the Court of the Justice of the Peace in Mysore.
Kolar Gold Fields.

Criminal Case No. 136 of 1911-12.

In the High Court of Judicature, Appellate Side, Madras,
Criminal Appeal No. 416 of 1911.

James Everitt Watters	Accused.	Appellant.
-vs-		
Government of Mysore per Geological Department	Complainant.	Respondent.

The Appellant abovenamed respectfully begs to appeal against the conviction and sentence passed on him by ~~P. W. L.~~ P. L. Browning Esquire, Justice of the Peace in Mysore, Kolar Gold Fields, in Criminal Case No. 136 of 1911-12 dated 17th day of August 1911 for the following and other reasons:--

1. The conviction is against law, the weight of evidence and the probabilities of the case.

2. The trial was carried on with undue haste. The occurrence took place on the 9th August, the charge was put in against accused on the 14th August, the whole of the evidence was taken next day, the 15th, and judgment was delivered on the 17th idem. The accused, who is naturally quite ignorant of the law and legal procedure of the Courts, being taken unawares, and having

200 Rs

no one to advise him, was unable to ~~in~~ cross-examine the expert witnesses or defend himself properly.

3. The evidence is solely that of mine officials, no independent expert being calledxby either by the prosecution or the Court. It does not go beyond the one point that no marks of obstruction were found in the valve. It was not brought out that the closing or tightness of the valve might be due to causes other than an obstruction which would cause marks, eg .

(a) Priming:-- i.e., water from the boiler getting into the cylinder with the steam. This tends to prevent the closing of the valve and would probably be due to the fireman allowing the water in the boiler to stand above its proper level. No one examined the boilers in the present case.

(b) Super-heating:-- this by expanding the valve causes it to stick. This might be an aid in opening the valve but disadvantage in closing. No evidence was given on this point nor were temperatures tested.

(c) Some foreign substance might get in between the valve rod and the floor. This again may allow of opening but wholly prevent closing, and leave no marks.

(d) A piece of rubber or insertion may pump off from the joints or steam pipe and travelling with the water come to the throat of the valve. While this absolutely prevents closing it leaves no trace or mark before or after an accident. Such a

240 Am

28

cause was the more likely as the joints of this engine had only recently been re-made.

4. None of the causes mentioned in the preceding paragraph were in any way under the purview or control of accused nor were the conditions which might evidence them inquired into by the Engineers. Nor was any explanation given of why the valve rod leading to the lever was found broken. This might have been broken by some foreign body as a bolt, having no connection with the valve but causing the accident or more probably by the accused's own manipulation of the valve in attempting to shut it-

5. The evidence proves that the movement of the cages was at first normal. This shows that too much steam was not allowed at starting but there must have been a sudden accession possibly from causes (a) or (b) above.

6. This sudden quickening of speed was noticed by the banksman only when the shackle appeased, and it is shown from his evidence and that of the Chief Engineer that a delay of one second was enough to be too late. Other witnesses place the time at 2 or 3 seconds, but the banksman was practically in the same observational position as accused.

7. The Magistrate bases his judgment on the presumption that the accident could, on the evidence, be due only to carelessness. He erred in law in so doing, without previously eliminating other possible causes, some of the most probable of

2464 Army

29

which are mentioned supra.

8. It was the duty of the mine authorities to provide an automatic safety catch and not place upon any man the responsibility of stopping an engine within one second by manual manipulation alone. If such a catch had been provided the cage would have been brought to rest in time and an accident averted.

9. Any Engineer will admit that an engine valve may stick from various causes and no evidence of the sticking could afterwards be found from an examination of the valve.

10. Accused does not for a moment admit any carelessness on his part, but begs to submit that even on the evidence such carelessness could not have lasted more than one second. When it is considered that accused had been kept at work all night and had been caused to work for 8 hours 35 minutes in direct contravention of Regulation 149, one of the very Regulations under which he has been convicted, a Regulation strictly limiting in view of the great responsibility and strain put upon drivers of winding engines where human life is at stake, the shift to 8 hours in 24, a delay of one second on the occurrence of a sudden increase of speed, could not be considered to merit the infliction of the maximum sentence of 3 months Rigorous imprisonment. Such a sentence is excessive and in any event --- accused prays for its reduction and alteration into a fine.

11. The offence is identical with one under section 304 A,

252 Any

30

Indian Penal Code which is bailable.

M A D R A S.
22nd August 1911.

(Sd) John Adam
22-8-11.
Counsel for Appellant.

(True Copy)

Superintendent of Copyists.

2519/13.9.11

24/960

31

G.R.S. 26]

Ct. File No. 97

Serial No.

Diary No. of letter replied to

D.O No. 1016.

General and Revenue Secretariat

( )

, the *19* .

Date of issue 19.9.11.

Signed by

~~To~~

Dear Sir,

In reply to your letter
N° 1251 of 14.9.1911 in
the matter of the Crimina
Appeal filed by James
Everitt Watters (N° 446 of
1911), I am desired to
say that you may
oppose the appeal
A printed Copy of
the Judgment of the
Justices of the Peace
will be sent to you
as requested. over.

~~I am &c~~
Yours Sincerely

SUBJECT.

Sd/- S Narayanaiya
Asst Secy.

Copy to C.T. Napier Esq
Govt Pleader. Madras

32

G.R.S. 26]

File No. 97-11

Serial No. 12

*Diary No. of letter replied to*_____

D O No. 1 Camp.

General and Revenue Secretariat

( )

, *the* 19 .

Date of issue 1/10/14

Signed by Mr S Srinivasa Ayya

~~To~~

Dear Sir,

I am desired to return herewith the original notice received with your letter N 1251 of 14-9-1914, in regard to the appeal filed by Mr John Adam Counsel for James Everitt Walters Concerned in the Kolar Gold Fields Overwind Case.

Yours Sincerely

over.

SUBJECT.

C. J. Napiers Esqr
Govt Pleader.
Madras

33

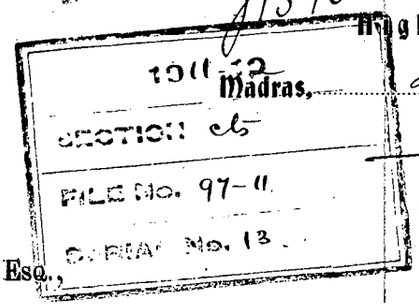
Government Pleader's Office,

No. 1865

DIARY NO. 1370

High Court,

Madras, 8/11/ 1911.



1.12.

III Cb
3/12

From

C. F. NAPIER, Esq.,

PUBLIC PROSECUTOR,

Madras,

To

THE ~~DISTRICT MAGISTRATE OF~~ Secretary to the Government of Mysore, General Revenue Department Mysore, Bangalore

SIR,

*No. 1251 dated 14.9.11

~~With reference to your~~ In continuation of my letter noted on the margin, * I have the honour to inform you that Criminal Appl. No. 416 of 1911 came on for hearing on 22.11.11, when the conviction & sentence were set aside & the accused acquitted.

2. The judgment copies which accompanied your reply are herewith returned.

I have the honour to be,

Sir,

Your most obedient Servant,

Napier

Public Prosecutor.

G. P. Form No 6.
200—17-8-11.

IN THE COURT OF THE JUSTICE OF THE PEACE IN MYSORE, KOLAR GOLD FIELDS.

Dated the 17th day of August 1911.

PRESENT—P. F. BOWRING, Esq., *Justice of the Peace.*

Criminal Case No. 136 of 1911-12.

Complainant	*Accused*
Government per Geological Department.	James Everett Watters.

The accused was charged by Mr. Bocquet, Officiating Chief Inspector of Mines in Mysore, with negligently doing an act endangering the lives of persons, *viz.*, by overwinding the hoisting engine at Tennant's Shaft, Champion Reef Mine, an offence punishable under Rule 200, Section 33 of the Mysore Mines Regulation.

The following witnesses were examined for the prosecution :—

1. J. Rolf, Underground watchman.
2. Mr. C. H. Dabb, Assistant Underground Agent.
3. Mr. C. Vivian, Miner.
4. Dr. L. Stokes.
5. Mr. H. Johns Banksman.
6. Mr. S. Jackman, Engine Driver.
7. Mr. C. T. Roberts, Chief Engineer.
8. Mr. W. J. Clemo, Engineer.

No exhibits were filed for the prosecution.

The statement of the accused was as follows :—

Q. What have you got to say ?

A. The accident was due to the starting valve having got tight. I tried to close it and I could not. I tried to close it when I noticed my engine was going at high speed. I then reversed the engine and seeing that had no effect, I applied the brakes. That is all the driver could have done. I stood on the foot-plate till after the end of the rope came in and after that took the wheel of the stop valve to go to the boiler house to shut off the steam from the engine. I tried to pass by the cylinder to go there, but could not go that way, so I went round outside to get into the boiler house. There I stopped all steam from the engine. There was nothing more for me to do after that.

Q. Why was your engine running too fast ?

A. Everything was in favour of the engine running at high speed as the down cage was full and the ascending one empty.

Q. Hasn't that often happened before ?

A. Yes.

Q. Do you wish to call any witnesses ?

A. No.

Q. How long would it take you to stop the engine going at full speed ?

A. I have never tried.

Q. How long would it take you to stop the engine going the fastest that you have ever driven it ?

A. I could not say.

Q. When do you usually cut off steam when hoisting ?

A. About 800 or 1,000 feet after starting. It is impossible to say how long you would keep the steam on.

No charge was framed in the case.

Neither witnesses were examined nor exhibits filed for defence.

The accused James Everett Watters has been charged under Rule 200, Section 33 of the Mysore Mines Regulation, with negligently doing an act endangering the lives of persons working on the Champion Reef Mine.

Watters is one of the cage engine drivers at Tennant's Shaft, Champion Reef. At 6-35 A.M., on the 9th instant, he was on duty driving the engine, and he allowed the engine to get out of control with the result that an overwind took place. The ascending cage at the time was empty and was hung up in the head gear, the rope and shackle being detached and dragged through the roof of the engine room, where it did considerable damage before the engine came to a standstill.

In the descending cage there were unfortunately 20 coolies going to work.

J. Rolf, 1st prosecution witness, Underground watchman, has deposed that he was awaiting the arrival of the cage at the 25th level when he heard a sudden loud noise and the cage rushed down and dashed on to the buffers 3 ft. below.

The witness deposed in detail how he sent for help and set to work to extricate the injured men, one of whom was already dead.

It took about three-quarters of an hour to get the men out of the two compartments of the cage, as they were all huddled together in the bottom with their legs broken. As soon as they were all taken out, they were sent along to Carmichael's Shaft, and from there to surface, and thence to hospital. Second prosecution witness C. Dabb, corroborates this evidence.

Third prosecution witness C. Vivian deposes that he inspected the cage road that morning which it is his business to do every day and that all was in order.

Doctor Stokes, 4th prosecution witness, deposes that 19 coolies were brought to the hospital that morning, all of whom were injured.

Four of them died before 11 A.M., six more had their legs amputated the same morning, the rest being treated for fractured legs.

On the 11th, two more of them died, and two are now in a dangerous condition.

All had their legs broken except two who are suffering from contusions of the ankle and shock and concussion of the spine.

The death roll up to date is therefore seven with two more likely to die, the remainder being seriously injured.

H. Johns Banksman, 5th prosecution witness deposes that he was on duty that morning when the accident occurred. The cage had made 16 trips without any mishap. During the 17th trip the shackle of the ascending cage suddenly appeared travelling very fast. He rang to the driver to stop, but in the meantime the cage was hung up in the head gear. The descending cage has left surface at the usual pace.

6th prosecution witness S. Jackman, Engine Driver, has given evidence that on the 8th instant, he was on duty and handed over this same engine to the accused when he came to relieve him at 10 P.M. that night. The engine was all right then and there were no defects. The witness remained in the engine room a short time during which the engine made two trips. The witness has driven the engine regularly, since June 1910 except for five months when he was on leave, and has never had any trouble with it.

7th prosecution witness Mr. C. T. Roberts, Chief Engineer of the Champion Reef Mine, deposes that he examined the engine after the accident. The south rope was entirely coiled on the drum and the north rope had run out to the anchorage when it passes through the drum.

The valve gear was almost completely smashed, caused by the swinging round of the shackle of the south rope after it had been detached from the cage hung up on the head gear.

The witness had the starting valve opened and found nothing wrong with it. He could find no defects in the engine anywhere and is of opinion that the accident was due to the mistake of the driver and not to anything being wrong with the engine.

The overwind was due to the fact that the engine had attained a great speed and the driver was a few seconds too late in taking the necessary steps to stop it. After the damage was done, the accused took all the steps he could to stop the engine.

After the descending cage had reached the bottom there was still 620 feet of rope on the north drum of the engine which was all paid out down the shaft.

W. J. Clemo, 8th prosecution witness, also an engineer, has deposed that he examines the engines under his charge twice a day. He had examined this engine on the Tuesday morning and there was nothing wrong with it. The engine has been working for a little over two years and has never caused any damage.

The accused told the witness after the accident, that the same was due to his not being able to close the throttle valve. Witness examined the valve and there was nothing wrong with it, or any obstruction. If there had been, there would have been marks on the valve, which there were not.

The accused states that the accident was due to the starting valve having got tight, and when he tried to close it, he could not. He then reversed his engine and applied the brakes which was all he could do. He remained at his post till the engine came to a stand-still, and then went out to the boiler house and shut off all steam from the engine. The accused states moreover that the engine attained a high speed because the descending cage was full and the ascending one empty, but he admits that this is a common occurrence. Steam is usually cut off after travelling 800 or 1000 feet from starting.

From the evidence on record, it will be seen that a very disastrous accident occurred owing to the overwinding of this engine, which has cost the lives of seven men up to date and very serious injuries to thirteen others, some of whom are not likely to recover.

From the evidence of Mr. Roberts, the Chief Engineer, Mr. Clemo, an Assistant Engineer, and Jackman, another driver, who works on the same engine, we can but come to the conclusion that the accident was not due to any defect in the engine.

The accused states that he was not able to close the throttle valve which resulted in the engine getting out of control, but there is nothing whatever to prove that such was the case, as the valve was afterwards examined and found to be all right with no obstruction inside it. The accused has called no witnesses on his behalf.

There can be no doubt, I think, that the accident was due to the engine having attained an excessive speed which prevented the accused from stopping it in time.

The fact that after the cages had come to rest 620 more feet of rope was paid off before the engine stopped, shows how out of control the engine had become.

I am of opinion that the accident was due to some momentary carelessness or forgetfulness of the driver in allowing too much speed to the engine, which resulted in its getting away with him and consequent inability to stop it in time to prevent the accident.

No doubt human beings are liable to err, but it is a serious thing to do so when the lives of their fellowmen are at stake, and I am of opinion that the accused must take the full responsibility of having caused this unfortunate accident, through his own error of judgment.

The Court finds James Everett Watters guilty of having committed an offence under Rule 200, punishable under Section 33 of the Mysore Mines Regulation, and sentences him to three months' rigorous imprisonment.

17-8-1911. P. F. BOWRING.

G.R.S. 26] 1510/1512

37

File No. 97-11

Serial No, 14.

*Diary No. of letter replied to*_____

No. J 1840.

General and Revenue Secretariat

(do)

, *the* 19 .

To

C. F. Napier Esq

Public Prosecutor

Madras.

Date of issue 20-12-11

Signed by Mr S. Srinivasaraja

Sir,

Adverting to the correspondence ending with your letter No 1865 dated the 30th November 1911, I am directed ~~the honour & request you to be so~~ good as to obtain & forward to this office a copy of the judgment of the Madras High Court in Criminal Appeal No 416 of 1911 ~~entitled The Mayor Govern-~~ ment for & "James Everett Batters

over.

SUBJECT.

38

v. Mysore Government ~~for Geological~~
1

~~Department~~

I have etc

Sd

Dep. Offg. Secretary.

SW(11)
13/12

SA-15
14/12/09

List of enclosures,

Copied by RG

Examined by SW

GPB—10,000—28-2-11.

No. 161

Government Pleader's Office.

DIARY No. 1904

High Court,

25th January 1912.

1911-1912 Madras.

SECTION Courts.

FILE No. 97-11 15

From

C. F. NAPIER, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Secretary to the Government of Mysore,

General and Revenue Department, Mysore,

Bangalore.

SIR,

With reference to your letter No. J 1840, dated 20th December 1911, I have the honour to forward herewith a copy of judgment in Criminal Appeal No. 416/11 on the file of the High Court.

I have the honour to be,
S i r ,
Your most obedient servant,

C Napier

Government Pleader.

G. P. Form No. 16.
400—16-11-11.

40

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the twenty second day of

N O V E M B E R

One thousand nine hundred and eleven.

Present:---

The Honourable Mr. Justice Sundara Aiyar,

and

The Honourable Mr. Justice Spencer

(Seal)

Criminal Appeal No. 416 of 1911.

James Everitt Watters Appellant (Accused).

Appeal against the conviction and sentence passed by the Court of the Justice of the peace in Mysore, Kolar Gold Fields in Criminal Case No. 136 of 1911-12.

This appeal coming on for hearing yesterday, upon perusing the petition of appeal and the record of the evidence and the Judgment of the Court of the Justice of the Peace and upon hearing the arguments of Mr. John Adam Counsel for the Appellant and of Mr. P. R. Grant for the Public Prosecutor on behalf of Government and the case having stood over for consideration till ~~Thursday~~ this day the Court delivered the following

J U D G M E N T--

Criminal appeal 416 of 1911;- The accused, one of the cage engine drivers at Tennant's shaft Champion Reef, in the service of a mining company has been convicted under Rule 200, Section 33 of the Mysore Mines Regulation for negligently doing an act

41

endangering the lives of persons working on the Champion Reef Mine. He was on duty on the morning of the 9th of August 1911 driving the cage engine. The case against him is that he by negligence allowed the engine to get out of control with the result that an overwind took place. In the descending cage there were 20 coolies going to work. The result of the overwind was that a terrible accident occurred in consequence of which 7 of the coolies died before the case was tried and two more were likely to die, and all the rest sufferred grievous hurt.

The evidence of Prosecution witnesses Nos. 7 and 8, the Chief Engineer and the Assistant Engineer proves that the engine was in thoroughly good order without any defect before the --- accident occurred, and we accept the finding of the Lower ---- Court that the accident was one not due to any defect in the engine. Prosecution Witnesses No. 7, the Chief Engineer deposes that " the overwind was due to the great speed of the engine and the engine driver being a few seconds too late in taking the necessary steps to stop the engine." In cross-examination he says " so far as I can see the accused took all the steps he could to stop the engine, but on account of the pace it was -- going he was a few seconds too late". Prosecution Witness 8 the Assistant Engineer says " I have formed no opinion as to the cause of the accident. I do not think that it was due to the engine." The question we have to decide is whether there

260 any

42

is any evidence that it was due to any negligence on the part of the accused, the onus of proving which is on the prosecution that the engine got out of control. The Justice of the Peace who tried the case concludes "from the evidence of Mr. Roberts, the Chief Engineer and Mr. Clemo an assistant engineer (that is prosecution witnesses Nos. 7 and 8) and Jackman another --- driver who works on the same engine, we can but come to the conclusion that the accident was not due to any defect in the engine.

"The accused states that he was not able to close the --- throttle valve which resulted in the engine getting out of --- control, but there is nothing whatever to prove that such was the case, as the valve was afterwards examined and found to be all right with no obstruction inside.

I am of opinion that the accident was due to some momentary carelessness or forgetfulness of the driver in allowing too much steam to the engine which resulted in its getting away with him and consequent in-ability to stop it in time to prevent the accident". The finding therefore amounts to this: as the engine was in perfect order before the accident happened and as the valve was found to be all right without any obstruction inside it after the accident, the accused must have been negligent. Wherein his negligence consisted there is no evidence _

Prosecution witness No. 8 is not even prepared to say that

246 Hy

43

that the accused's negligence was the cause of the accident, and Prosecution Witness No. 7 merely expresses his own opinion that the accused must have been negligent. The appeal petition suggests several other causes which might have led to the --- accident without any negligence on the part of the accused, such as water from the boiler getting into the cylinder with the steam which would prevent the closing of the valve and which might be due to the firemen allowing the water in the boiler to stand above its proper level; superheating, which by expanding the valve would cause it to stick and would make the closing of it difficult; some foreign substance getting in between the valve rod and the floor; a piece of rubber or internal jumping off from the joints or steam pipe and travelling with the water -- coming to the throat of the valve. The prosecution is not prepared to deny before us that one or other of these causes might have led to the accident. The prosecution 5th witness Johns says that before the accident the cage had made 16 trips without any mishap and during the 17th trip the shackle of the ascending cage suddenly appeared travelling very fast. There is nothing to show what occurred after this 16th trip to lead to the excessive speed. It cannot be assumed that it was negligence on the part of the accused and not any of the other causes suggested by him that led to the accident. We have no doubt that on the

(2)

254 Am

44

evidence the accused is entitled to be acquitted.

It is regrettable that the prosecution was conducted with out the help of the counsel. The accused also complained that he was allowed no opportunity of obtaining legal assistance, no summons was issued to him to appear, but he was taken before the Justice of the Peace by the mining authorities, and the whole trial was concluded on the spot on the 15th of August. There is no reason why the accused should not have been charged with an offence under Section 304 (a) of the Penal Code under which Section the accused would be guilty if negligence was proved against him. We have considered whether we should not set aside all the proceedings and direct the Lower Court to commit him for an offence under that section. But it is stated by Mr. P. Grant appearing for the Public prosecutor that no additional evidence would be forthcoming for the prosecution to prove negligence on the part of the accused. No useful purpose would be served by directing a retrial and we must therefore acquit him and --- direct his bailbond to be discharged.

Exd.

(Sd) Arthur Davies,
22-11-11.
Dy. Registrar. App. Side.

(True Copy)

Superintendent of Copyists

203/1143 Am

1 29/8 45

G.R.S. 26]

cls File No. 97-11

Serial No. 16

Diary No. of letter replied to

No. J2532 Encl 1

General and Revenue Secretariat

(cls)

, *the* 19 .

To

The Dy Commissioner,

Kelani District

Date of issue 1-3-12

Signed by Sgd S. Arigananaiya

Sir,

I am directed to forward herewith for information and kind return with any remarks you may have to make on the haste of the trial commented upon, a Copy of the Judgment passed by the High Court of Judicature at Madras in Criminal Appeal No. 416 of 191 (Appellant James Everett Watters)

I have &c.

SUBJECT.

for Secy

Copies by
Sgd Siriwardhana Mudiyanse
29-2-12

No. 6031/293 Office of the District Magistrate,
2 Kolar district,
Dated, Kolar 12th March 1912.

46.

Diary No. J2418

10/4-1912
Secretariat
No. 97-11
No. 17

From.

P. F. Bowring Esquire
Offg District Magistrate,
Kolar District.

To,

C. S. Balasundram Iyer Esquire, B.A.
Offg. Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Departments.

Sir,

With reference to your letter No. J. 2532/Sts 97-11: dated 1st instant, forwarding for information and return with my remarks, if any, on the haste of the trial commented upon, a copy of the judgment passed by the High Court of Judicature at Madras in Criminal appeal No. 416 of 1911, I have the honor to state that I have no special remarks to make on the subject, but I submit herewith, for your information, a copy of the letter No. 593/11-12 dated 7th March 1912, from the Officiating Chief Inspector of Mines in Mysore, detailing the circumstances under which the case referred to was pushed through.

2. The enclosure received with the above is herewith returned.

I have the honor to be,
Sir,
Your most obedient Servant

B Rasachetty
Treasury Assistant Commissioner,
for District Magistrate, Kolar,
(absent from station.)

III
14/3/12 C/ 1912

From The District Magistrate
Kolar District

To The Secretary to the Govt of
H.H. the Maharaja of Mysore
General & Revenue Depts

Dated

Despatched 12th March 1912

Received

General No. 6031

No. 293

Enclosure No. 2

Stating that he has no special remarks to make and submitting a copy of the Off.g Chief Inspector of Mines's letter detailing the circumstances under which the case in question was pushed through &c —

GPB—1,50,000—20-6-11

Letter No. 593/11-12 dated 7th March 1912 from the Offg. Chief Inspector of Mines in Mysore, to the District Magistrate, Kolar District.

In reply to your memo M.1181/1 dated 2nd March 1912, forwarding letter No. J. 2532/cls 97-11 from the officiating Secretary General and Revenue Departments, with copy of the judgment passed by the High Court of Judicature at Madras in Criminal appeal no. 416 of 1911 (Appellant, James Everett Watters), I have the honour to inform you, in answer to your question as to why it was thought necessary to push through with the case as soon, that the then deputy Commissioner and District Magistrate of Kolar called on me personally on the 13th August 1911 (the accident happened on the 9th) and asked me, after I had decided to prosecute Watters, to get the charge sheet prepared

and

and the case posted as soon as possible, which was accordingly done. The charge sheet was laid before the Special Magistrate on the 14th and the case posted by him to the 15th August 1911 —

The correspondence is herewith returned — "

"

Copy

"

Resident
Treasury Assistant Commissioner
For District Magistrate,
Kolar District.
(absent from Station)